

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PITTSFIELD GENERATING COMPANY, L.P.,)
)
Plaintiff,)
)
v.)
)
DEVON CANADA CORPORATION,)
)
Defendant.)
)
)

Civil Action No:
04-30128-MAP

**DEFENDANT DEVON CANADA CORPORATION'S MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION AND FORUM NON CONVENIENS**

Pursuant to Federal Rule of Civil Procedure 12(b)(2), defendant Devon Canada Corporation (“Devon”) hereby moves to dismiss the Amended Complaint filed by plaintiff Pittsfield Generating Company, L.P. (“PGC”) for lack of personal jurisdiction or, alternatively, on grounds of forum non conveniens. Prior to this filing, Devon filed a Motion to Stay in Deference To a Pending Foreign Proceeding. Should the Court grant the motion for a stay, this Motion to Dismiss need not be reached.

In support of its Motion to Dismiss, Devon states as follows:

1. This Court lacks personal jurisdiction over Devon because (a) Massachusetts' long-arm statute, Mass. Ann. Laws ch. 223A, § 3 (2004), does not authorize jurisdiction over Devon and (b) the exercise of personal jurisdiction does not comport with the due process requirements of the United States Constitution.
2. Even if this Court has personal jurisdiction over Devon, which is not admitted but denied, this case should be dismissed under the doctrine of forum non conveniens because (a) the

Province of Alberta, Canada is available as an adequate alternative forum, and (b) the balance of private and public interests favors the Province of Alberta as the forum for litigating this dispute.

3. The Court of Queen's Bench of Alberta, Judicial District of Calgary, has determined that with respect to a parallel action involving a similar dispute, the Alberta court has jurisdiction over PGC and the Alberta forum is the most appropriate and convenient forum in which to litigate the dispute.

A Memorandum of Law in support of this Motion is included herewith and incorporated herein by reference.

WHEREFORE, defendant Devon Canada Corporation respectfully requests that the Court grant this Motion, and dismiss plaintiff Pittsfield Generating Company L.P.'s Amended Complaint for lack of personal jurisdiction or, in the alternative, on grounds of forum non conveniens.

Dated: October 22, 2004.

Respectfully submitted,

/s/ Anita B. Bapooji
William L. Prickett (BBO #555341)
Anita B. Bapooji (BBO #644657)
Testa, Hurwitz & Thibeault, LLP
125 High Street
Boston, MA 02110
Telephone: 617-248-7000

Counsel for Defendant
Devon Canada Corporation

John M. Simpson
Michelle C. Pardo
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: 202-662-0200
Facsimile: 202-662-4643

Of Counsel
Devon Canada Corporation

CERTIFICATION UNDER LOCAL RULE 7.1

I certify that on October 22, 2004, pursuant to Local Rule 7.1, counsel for the parties have conferred in good faith regarding Defendant Devon Canada Corporation's Motion to Dismiss For Lack of Personal Jurisdiction and Forum Non Conveniens and were unable to resolve or narrow the issues.

/s/ Anita B. Bapooji
Anita B. Bapooji

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant Devon Canada Corporation's Motion to Dismiss for Lack of Personal Jurisdiction and Forum Non Conveniens was served, via first class mail, postage prepaid on the 22nd day of October, 2004 on the following:

Robert J. Muldoon
David A. Brown
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 021100

/s/ Anita B. Bapooji
Anita B. Bapooji